

SPECIAL CIVIL APPLICATION No 1978 of 1985

Hon'ble MR.JUSTICE S.D.PANDIT

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JJJ

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5. Whether it is to be circulated to the Civil Judge? No

Versus

Appearance:

MR MM JADEJA for Petitioner

SERVED for Respondent No. 1, 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 23/07/96

### ORAL JUDGEMENT

2. The petitioner was appointed as a Post Graduate

Teacher by the Assistant Director of Education for S.S. Saurashtra Government by order dated 14.8.1951. At the time of entering her service, her date of birth was recorded in her service book as 26.12.1929. On 15.2.85, she received a letter from Director of Education, Gujarat State intimating her that he was initiating a suo moto inquiry in respect of the correctness of the entry of date of birth in her service record. In pursuance to the said letter, she had sent her explanation by letter dated 25.2.85. Thereafter, she has filed the present petition seeking a writ prohibiting the respondents from proceeding further with the said suo motu inquiry. It seems that after filing of this petition, said inquiry was concluded and it was found that her real date of birth was of 29.11.1926. At the time of entering the date of birth in her service record, said date of birth was not verified and no note to that effect was made in the service record. Therefore, in view of the said finding in the inquiry, the respondents had passed an order on 25.3.1985 to correct her date of birth from 26.12.1929 to 29.11.1926. She therefore, amended the petition and sought for quashing of the said order.

3. The petitioner has not mentioned in her petition as to how the entry made in her service record about date of birth as 26.12.1929 was true and correct date of birth. On behalf of the respondents counter affidavit has been filed by the Deputy Director of Education Shri S.M.Patel in which it has been mentioned that though the said date of birth was entered in her service record, the petitioner had not countersigned the said date of birth entry and there was no endorsement that the said entry is verified and found correct on the strength of some authentic document. It is further mentioned that the school leaving certificate of the petitioner shows that her date of birth is entered as 29.11.1926. The petitioner was a student of G.T. Girls High School, Rajkot and the certificate issued by the Head Master of the said school also shows that the date of birth of the petitioner is registered in the school Register as 29.11.1926. The school Register also further mentions that the last school attended by her was Civil Station Kanya Shala, Rajkot and the date of birth of the petitioner recorded was 29.11.1926. This entry in the Register is made on 15.4.1937. The petitioner has not produced any material to show that the entry of 26.12.1929 in her service record was correct. It must be remembered that the order in question passed on 27.3.85 is not passed arbitrarily. The petitioner was given opportunity to show cause as to why the entry in her service records as regards her date of birth should not

be corrected and after giving her such an opportunity said decision is taken on the strength of the entries in the school Register and school leaving certificate. The petitioner has not produced any material to show that said order is illegal or improper. The petitioner has also not produced any material on record to show that the entry in her service record is correct and proper entry. Thus I hold that the order passed against her could not be said to be illegal or improper. The inquiry was started sometime after 1964 and after giving her full opportunity to represent her claim and thereafter the correction in the date of birth has been made. Said decision could not be said to be improper or illegal. After filing the petition, she has also obtained interim orders to the effect that the result of the inquiry as to the petitioner's birth date if adverse, shall not be implemented against her and she shall not be suspended on that basis, till further orders. The respondent had preferred Civil Application No. 1266/87 against the said order but the same has been rejected in view of the fact that the said order had remained in force till March 1985 the date on which she attained the age of superannuation as the date of birth of 29.11.1929 . But any way I am unable to hold that the entry in the School Register produced by the respondent is illegal or improper. It has also come in counter affidavit of the respondent that the respondent had already initiated departmental proceedings against her and she has filed SCA No. 482/88 against the initiation of the said proceedings against her. In view of the initiation of the departmental proceedings and her challenge to the said departmental proceedings, relief sought in this petition could not be separately considered and decided though the petition is being dismissed. Therefore, I want to make it clear that she would be at liberty to show in the departmental proceedings initiated against her that the original entry made in the service records of the petitioner as regards her date of birth as 29.11.1929 was correct and true. Therefore, present petition will have to be dismissed on merits as well as in view of the fact that the petitioner has also retired from service. Rule discharged. No order as to costs.

(S.D.Pandit.J)